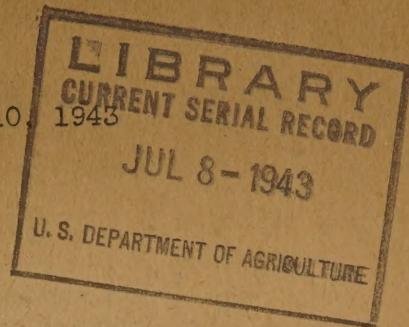


713
2E X84

U. S. Department of Agriculture
War Food Administration
Washington, D. C.

June 10, 1943



OPINION FOR LT. COL. JAY L. TAYLOR
Deputy Administrator
War Food Administration

Dear Col. Taylor:

Re: Use of workers recruited or transported under the authority of Public Law 45, 78th Congress, for activities other than the production and harvesting of essential agricultural commodities.

You have orally requested an expression of our opinion as to the authority to permit agricultural workers recruited or transported with funds appropriated by Public Law 45, 78th Congress, approved April 29, 1943, to be used for activities other than the production and harvesting of agricultural commodities essential to the prosecution of the war. We understand that the question immediately concerning you is whether it would be legally proper to permit such labor to be used in industries engaged in canning or processing agricultural commodities.

It is our opinion that there is no authority in Public Law 45 to permit the workers in question to be used in activities other than the production and harvesting of essential agricultural commodities, except perhaps in the case of an extreme emergency where temporarily the workers were not needed for the production and harvesting of such commodities, and, where, in addition, the use of workers for other purposes would be to the monetary advantage of the United States. This conclusion, of course, is applicable to all workers, both foreign and domestic, recruited, transported, or placed with funds appropriated by Public Law 45.

The whole import of Public Law 45 clearly is that the funds appropriated by that law should, as stated in section 1 thereof, be used "for assisting in providing an adequate supply of workers for the production and harvesting of agricultural commodities essential to the prosecution of the war . . ." In section 2(a) of the law which authorizes allocations of appropriated funds to the States, it is reiterated that the funds made available by that section are "for the purpose of assisting in providing an adequate supply of workers for the production and harvesting of agricultural commodities." In subsection (1) of section 2(a) reference is made to "the recruiting, placement (including the placement of workers as tenants and sharecroppers), and training of such workers." (Underlining supplied.) In subsection (2) of section 2(a) certain of the specific purposes for which the funds may be expended are stated, including "transportation, supervision, subsistence, protection, health and

2-Lt. Col. Jay L. Taylor

medical and burial services and shelter for such workers . . ." The reference again is to such workers, showing clearly that the workers to be recruited are those named in section 1.

Section 3(a), which makes available part of the funds appropriated by section 1 for direct expenditure by the War Food Administrator, does not restate the basic purpose contained in section 1. It clearly implies, however, by specific reference to section 1, that the funds made available for direct expenditure by the Administrator will be used only to carry out the basic purpose set forth in that section, namely, to assist in providing "an adequate supply of workers for the production and harvesting of agricultural commodities essential to the prosecution of the war."

The conclusion that funds are to be used only in providing for workers to be used in the production and harvesting of essential agricultural commodities is emphasized by the language of the definition of "agricultural labor" in section 5(c)(3) of the law. "Agricultural labor" is defined as including any services or activities within the provisions of section 3(f) of the Fair Labor Standards Act of 1938, or section 1426(h) of the Internal Revenue Code. In the case of the Fair Labor Standards Act, agriculture is limited to farming in all its branches and practices performed by a farmer or on a farm incident to or in conjunction with farming operations. The definition in the Internal Revenue Code includes services performed on a farm, and states further that such labor includes all services performed:

"(4) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption." (Underlining supplied.)

We have considered fully the discussions in the hearings and the Congressional debate on this legislation. Some references were made to the need for labor in such industries as those engaged in canning and processing agricultural commodities. There is nothing, however, which justifies disregarding the express provisions of the law to the effect that the funds were appropriated "for assisting in providing an adequate supply of workers for the production and harvesting of agricultural commodities essential to the prosecution of the war . . ."

3-Lt. Col. Jay L. Taylor

In the earlier part of the opinion, we made reference to the possibility that circumstances of an extreme emergency might justify temporary use of such agricultural workers for other than the production and harvesting of essential agricultural commodities. We do not consider that it is possible prior to an actual situation to attempt to set forth the type of extreme emergency which might justify even a temporary departure from the clear intent of the law that the appropriated funds are to be used for supplying workers for the production and harvesting of essential agricultural commodities. It is our view, however, that any such an emergency should be of an extreme character and that the circumstances should be such that the workers would be used under arrangements operating to the monetary advantage of the United States. Moreover the situation should be such that the workers were not needed or could not be used for the production and harvesting of essential agricultural commodities or that their use for other purposes would not lessen their availability or efficiency for such agricultural labor.

In addition, with respect to workers imported from a foreign country, care must be exercised to assure that such workers are used only as provided in agreements between the governments of the United States and of such foreign country.

If any emergencies should arise in which you desire to consider permitting the use of any of these workers for purposes other than the production and harvesting of essential agricultural commodities, you may desire to refer the matter to us for consideration in the light of the specific facts.

Sincerely yours,

/s/ Robert H. Shields

Robert H. Shields
Solicitor

